

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



BUENA PARK TEACHERS ASSOCIATION,)	
CTA/NEA,)	
)	
Charging Party,)	Case No. LA-CE-3310
)	
v.)	PERB Decision No. 1027
)	
BUENA PARK SCHOOL DISTRICT,)	November 24, 1993
)	
Respondent.)	
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Appearances: California Teachers Association by Charles R. Gustafson, Attorney, for Buena Park Teachers Association, CTA/NEA; Atkinson, Andelson, Loya, Ruud & Romo by James C. Romo, Attorney, for Buena Park School District.

Before Blair, Chair, Garcia and Carlyle, Members.

DECISION

GARCIA, Member: This is an appeal from a Public Employment Relations Board (Board) agent's dismissal (attached) of Buena Park Teachers Association, CTA/NEA's (Association) charge alleging that the Buena Park School District (District) insisted to impasse on an illegal contract provision; conduct alleged to violate the Educational Employment Relations Act (EERA) section 3543.5 (a), (b) and (c).¹ Review of the entire file and case law

¹EERA is codified at Government Code section 3540 et seq. Unless otherwise indicated, all statutory references herein are to the Government Code.. EERA section 3543.5 states, in pertinent part:

It shall be unlawful for a public school employer to do any of the following:

(a) Impose or threaten to impose reprisals on employees, to discriminate or threaten to discriminate against employees, or otherwise to interfere, with, restrain, or coerce

leads us to conclude that the Association failed to establish a prima facie case. Therefore, we affirm the Board agent's dismissal.

FACTS

In essence, the charge is made that a negotiated contract provision has become illegal because an appellate court decision California Teachers Assn. v. Governing Board of Lancaster School District (1991) 229 Cal.App.3d 695 [280 Cal.Rptr. 286] (Lancaster) could be interpreted to mean that Education Code section 45028² mandates that years of training and years of

employees because of their exercise of rights guaranteed by this chapter. For purposes of this subdivision, "employee" includes an applicant for employment or reemployment.

(b) Deny to employee organizations rights guaranteed to them by this chapter.

(c) Refuse or fail to meet and negotiate in good faith with an exclusive representative.

²Education Code section 45028 states:

(a) Effective July 1, 1970, each person employed by a district in a position requiring certification qualifications, except a person employed in a position requiring administrative or supervisory credentials, shall be classified on the salary schedule on the basis of uniform allowance for years of training and years of experience. Employees shall not be placed in different classifications on the schedule, nor paid different salaries, solely on the basis of the respective grade levels in which such employees serve.

In no case shall the governing board of a school district draw orders for the salary of any teacher in violation of this section, nor shall any superintendent draw any requisition for the salary of any teacher in violation thereof.

experience are to be the sole and unconditioned factors considered when placing teachers on a salary scale and moving them on the scale. While the District gave teachers salary scale credit for years of prior experience, the agreement also contained a provision which gave anniversary increments for years of service in the District and the "outside" service was not counted toward the anniversary increments. The Association alleges that denial of credit is an illegal application of Education Code section 45028 under Lancaster, and that insistence on the provision to impasse is therefore unlawful.

DISCUSSION

The Board agent dismissed the charge because EERA section 3543.2(d)³ allows Education Code section 45028 to be overridden

This section shall not apply to teachers of special day and evening classes in elementary schools, teachers of special classes for elementary pupils, teachers of special day and evening high school classes and substitute teachers.

(b) It is not a violation of the uniformity requirement of this section for a district, with the agreement of the exclusive representative of certificated employees, if any, to grant any employee hired after a locally specified date differential credit for prior years of experience or prior units of credit for purposes of initial placement on the district's salary schedule.

This subdivision is declaratory of existing law.

³Section 3543.2(d) states:

Notwithstanding Section 45028 of the Education Code, the public school employer and the exclusive representative shall, upon the request of either party, meet and negotiate regarding the payment of additional compensation based upon criteria other than

by agreement in cases of additional compensation (in the form of anniversary increments) and because Mayer v. Board of Trustees (1980) 106 Cal.App.3d 476 [165 Cal.Rptr. 655] (Mayer) permits reasonable qualifications, limits or modification of Education Code section 45028 factors when uniformly applied to all teachers.

Section 3543.2(d) makes a specific reference to Education Code section 45028 and clearly permits override. Education Code section 45028 came into being in 1969 and EERA section 3543.2(d) in 1983. Since it is reasonable to interpret the anniversary increments to represent additional compensation for service to the District and the Legislature clearly intended to authorize the parties to override Education Code section 45028 in such cases there is no illegal waiver of the benefits of Education Code section 45028.

Both of the previously cited appellate decisions rely on a California Supreme Court decision, Palos Verdes Faculty Assn. v. Palos Verdes Peninsula Unified Sch. Dist. (1978) 21 Cal.3d 650 [147 Cal.Rptr. 359] (Palos Verdes) for support.

Therefore we must review and interpret the cited cases to determine whether the Association has established an illegal application of Education Code section 45028 to sustain the charge. The cited appellate cases move in opposite direction

years of training and years of experience.
If the public school employer and the
exclusive representative do not reach mutual
agreement, then the provisions of Section
45028 of the Education Code shall apply.

when they consider whether Education Code section 45028 factors of experience and training can be qualified or limited in application. Lancaster leans toward the view that years of training and years of experience, unmodified by limits, qualifications or standards, are the sole determinants of placement on a salary schedule. Mayer leans toward the view that qualifications, including those that are subjective in nature, can condition training or experience for placement on a salary schedule. Palos Verdes makes it clear that years of training and years of experience are the most important determinants of placement on a salary schedule however, both may be limited and qualified under standards that are uniformly applied when a district gives credit for training or experience. Palos Verdes recognizes Education Code section 45028 was amended in 1969 to move away from a subjective standard of "reasonableness" that could be applied to individual teachers or groups of teachers. This case adopted the view that teachers were to be classified by years of training and/or years of experience as the basic determinants of placement on a salary schedule. However, the Supreme Court left room for district management to limit the amount of credit given for training and experience and to adopt standards of quality that training and experience must achieve to qualify for credit. (Palos Verdes, p. 661, fn. 6.). District management can qualify and/or limit credits so long as the standards and limits that condition the credits are uniformly applied to all teachers.

While the appellate decisions in the First and Fourth Districts move in the opposite direction when interpreting the Supreme Court decision in Palos Verdes we believe Lancaster strays further off course and cannot be the basis for declaring the District's application of Education Code section 45028 to be illegal. Since the Association has failed to demonstrate a prima facie case of insistence to impasse on an illegal contract provision, the Board agent was correct in refusing to issue a complaint.

ORDER

Based upon our review of the statutes, pertinent case law and the entire record in this case, the Board affirms DISMISSAL of the charge filed by the Buena Park Teachers Association, CTA/NEA against the Buena Park School District.

Chair, Blair and Member Carlyle joined in this Decision.

PUBLIC EMPLOYMENT RELATIONS BOARD



Los Angeles Regional Office
3530 Wilshire Blvd., Suite 650
Los Angeles, CA 90010-2334
(213) 736-3127



July 8, 1993

Charles R. Gustafson, Esq.
California Teachers Association
P.O. Box 92888
Los Angeles, California 90009

Re: DISMISSAL AND REFUSAL TO ISSUE COMPLAINT, Unfair
Practice Charge No. LA-CE-3310, Buena Park Teachers
Association, CTA/NEA v. Buena Park School District

Dear Mr. Gustafson:

In the above-referenced charge, filed on May 18, 1993, the Buena Park Teachers Association, CTA/NEA (Association) alleges that the Buena Park School District (District) insisted to impasse on an illegal contract provision. This conduct is alleged to violate Government Code sections 3543.5(a), (b) and (c) of the Educational Employment Relations Act (EERA).

I indicated to you, in my attached letter dated June 23, 1993, that the above-referenced charge did not state a prima facie case. You were advised that, if there were any factual inaccuracies or additional facts which would correct the deficiencies explained in that letter, you should amend the charge. You were further advised that, unless you amended the charge to state a prima facie case or withdrew it prior to July 7, 1993, the charge would be dismissed.

On July 7, 1993, you filed a First Amended Charge. The amended charge contains no additional facts, but it cites the case of California Teachers Assn., v. Governing Board (1991) 229 Cal.App.3d 695, 701 [280 Cal.Rptr. 286], for the proposition that under Education Code section 45028 salary classification "must proceed wholly on a uniform basis for years of training and experience." In the same case, however, it is acknowledged that under Government Code section 3543.2(d) there may be "additional compensation based upon criteria other than years of training and years of experience." (Id. at 705, emphasis in the original.) In the present case, the anniversary increment provision provides additional compensation (an "increment") on the basis of an event (an "anniversary") that is not identical to years of "training" or years of "experience." I have still found no authority that directly supports the proposition that such an anniversary increment provision is necessarily illegal and non-negotiable.

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impasse on or about January 19, 1993.²

Based on the facts stated above, the charge does not state a prima facie violation of the EERA, for the reasons that follow.

Education Code section 45028 provides in part that credentialed school district employees "shall be classified on the salary schedule on the basis of uniform allowance for years of training and years of experience." Government Code section 3543.2(d) of the EERA, however, provides as follows:

Notwithstanding Section 45028 of the Education Code, the public school employer and the exclusive representative shall, upon the request of either party, meet and negotiate regarding the payment of additional compensation based upon criteria other than years of training and years of experience. If the public school employer and the exclusive representative do not reach mutual agreement, then the provisions of Section 45028 of the Education Code shall apply.

The charge cites no authority for the proposition that an anniversary increment provision is illegal and non-negotiable under Education Code section 45028 and Government Code section 3543.2(d), and I have found no such authority. On the contrary, a Court of Appeal approved a salary scheme with an anniversary increment feature in Mayer v. Board of Trustees (1980) 106 Cal.App.3d 476 [165 Cal.Rptr. 655], where one of the issues was whether an employee could be denied an anniversary increment because of unsatisfactory performance. The Association itself apparently has not always believed that the anniversary increment provision is illegal and non-negotiable, since it agreed to the provision in the previous collective bargaining agreement. It therefore cannot be said that the charge makes a prima facie showing that the District's alleged insistence to impasse on the anniversary increment provision violated the EERA.

For these reasons the charge, as presently written, does not state a prima facie case. If there are any factual inaccuracies in this letter or additional facts which would correct the deficiencies explained above, please amend the charge. The

²Apparently neither party has requested an impasse determination from PERB.

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amended charge should be prepared on a standard PERB unfair practice charge form, clearly labeled First Amended Charge, contain all the facts and allegations you wish to make, and be signed under penalty of perjury by the charging party. The amended charge must be served on the respondent and the original proof of service must be filed with PERB. If I do not receive an amended charge or withdrawal from you before July 7, 1993, I shall dismiss your charge. If you have any questions, please call me at (213) 736-3127.

Sincerely,

Thomas J. Allen
Regional Attorney

PUBLIC EMPLOYMENT RELATIONS BOARD



Los Angeles Regional Office
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Los Angeles, CA 90010-2334
(213)736-3127



June 23, 1993

Charles R. Gustafson, Esq.
California Teachers Association
P.O. Box 92888
Los Angeles, California 90009

Re: WARNING LETTER, Unfair Practice Charge No. LA-CE-3310,
Buena Park Teachers Association, CTA/NEA v. Buena Park
School District

Dear Mr. Gustafson:

In the above-referenced charge, filed on May 18, 1993, the Buena Park Teachers Association, CTA/NEA (Association) alleges that the Buena Park School District (District) insisted to impasse on an illegal contract provision. This conduct is alleged to violate Government Code sections 3543.5(a), (b) and (c) of the Educational Employment Relations Act (EERA).

My investigation of this charge reveals the following relevant facts.

The Association and the District were parties to a collective bargaining agreement for the term July 1, 1991, through June 30, 1992. The agreement contains a salary provision concerning anniversary increments that states as follows:

Qualifying years for 14th, 16th, 20th and
25th anniversary increments must have been
served in the Buena Park School District.

As a result, employees given credit for prior experience for general salary placement purposes are not given that credit for anniversary increment purposes.¹

The parties began negotiating a successor agreement in October 1992. The Association took the position that the anniversary increment provision violated Education Code section 45028 and should be eliminated, but the District allegedly insisted that the provision be maintained. The parties jointly declared

¹This would appear to be the nature of an anniversary increment.

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I am therefore dismissing the charge, based on the facts and reasons contained in this letter and my June 23 letter.

Right to Appeal

Pursuant to Public Employment Relations Board regulations, you may obtain a review of this dismissal of the charge by filing an appeal to the Board itself within twenty (20) calendar days after service of this dismissal. (Cal. Code of Regs., tit. 8, sec. 32635(a).) To be timely filed, the original and five copies of such appeal must be actually received by the Board itself before the close of business (5 p.m.) or sent by telegraph, certified or Express United States mail postmarked no later than the last date set for filing. (Cal. Code of Regs., tit. 8, sec. 32135.) Code of Civil Procedure section 1013 shall apply. The Board's address is:

Public Employment Relations Board
1031 18th Street
Sacramento, CA 95814

If you file a timely appeal of the refusal to issue a complaint, any other party may file with the Board an original and five copies of a statement in opposition within twenty (20) calendar days following the date of service of the appeal. (Cal. Code of Regs., tit. 8, sec. 32635(b).)

Service

All documents authorized to be filed herein must also be "served" upon all parties to the proceeding, and a "proof of service" must accompany each copy of a document served upon a party or filed with the Board itself. (See Cal. Code of Regs., tit. 8, sec. 32140 for the required contents and a sample form.) The document will be considered properly "served" when personally delivered or deposited in the first-class mail, postage paid and properly addressed.

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Extension of Time

A request for an extension of time, in which to file a document with the Board itself, must be in writing and filed with the Board at the previously noted address. A request for an extension must be filed at least three (3) calendar days before the expiration of the time required for filing the document. The request must indicate good cause for and, if known, the position of each other party regarding the extension, and shall be accompanied by proof of service of the request upon each party. (Cal. Code of Regs., tit. 8, sec. 32132.)

Final Date

If no appeal is filed within the specified time limits, the dismissal will become final when the time limits have expired.

Sincerely,

ROBERT THOMPSON
Deputy General Counsel

By THOMAS J. ALLEN
Regional Attorney

Attachment

cc: Asa E. Reaves, Esq.